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IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT

BILASPUR

W.P.NO. 34 / 2005

Petitioner : Ganpat Ram
S/o Shankar Lal,
Aged about 55 years,
Occupation - Mining Sardar Main Mines
S.E.C.L, Surakachhar,
Dist : Korba-(C.G.)

Versus

Respondents :1. South Eastern Coalfields Ltd.,
Through C.M.D. Head Office,
Seepat Road, Bilaspur,
Dist : Bilaspur-(C.G.)

2. The Director (Personnel)
Head Office S.E.C.L.,
Seepat Road, Bilaspur,
Dist : Bilaspur-(C.G.)

3. The General Manager,
Surakachhar Colliery, Korba,
Dist : Korba-(C.G.)

4. The Sub Area Manager,
Surakachhar Colliery, Korba,
Dist : Korba-(C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक 47

मामला क्रमांक ..... W.P. 34 / ..... **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

20-4-2005

On a mention being made, the case is taken up for hearing.

Mr. Suresh Verma, counsel for the petitioner.

Mr. Ravi Ranjan Sinha, counsel for the respondents.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality and propriety of the letter/ communication dated 5-10-2004 (Annexure P-4), whereby the petitioner was informed that based on his date of birth i.e. 11-3-1945 he will be retiring on 31st March, 2005, on attaining the age of 60 years on 10-3-2005.

Return has already been filed on behalf of the respondents, therefore, the arguments for final disposal are heard.

The petitioner's case is that his correct date of birth is 6-4-1949 and to this effect the school leaving certificate Annexure P-1 is in his favour. The petitioner joined service on 24-4-1973 at Banki Mogra Coilliery, District: Korba as General Majdoor. Thereafter, he was asked to pass the departmental examination for the post of Mining Sirdar and he passed the said Mining Sirdar Examination on 29-10-1986. The certificate Annexure P-2 of the same was issued in which also his date of birth was recorded as 6-4-1949. Despite the date of birth of the petitioner 6-4-1949 his incorrect date of birth has been mentioned as 11-3-1945, therefore, the impugned letter/ communication Annexure P-4 issued by respondents No.3 & 4 be quashed.

Return has been filed on behalf of the respondents in which it has been mentioned that in Form 'B' (Annexure R-1) the date of birth of the petitioner was mentioned as 11-3-1945, and in the Menials' Service Register (Annexure R-2) as also the service record (Annexure R-3) the date of birth of the petitioner is mentioned as 11-3-1945. Annexures R-1 & R-3 bear the signature of the petitioner. Therefore, the petitioner is not entitled for the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.34/ सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

benefit and now he is not entitled to challenge the date of birth as per determination of date of birth in respect of existing employee, Part 'B' of Implementation Instruction No.76, the Mining Sirdar's Certificate is to be considered as valid and the school leaving certificate is not valid. Only the Board Certificate of Matriculation examination has to be considered as valid document for existing employees. In view of the above, the petition deserves to be dismissed.

Having heard learned counsel for the parties and having regard to the facts and circumstances of the case, I have perused the record.

Sub-clause (ii) of clause (A) of Implementation Instruction No.76 (Annexure R-4) regarding determination of the age at the time of appointment envisages that "in the case of appointees who have pursued studies in a recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances". The petitioner is a non-matriculate as per the school leaving certificate (Annexure P-1) in which his date of birth is recorded as 6-4-1949, also in the Mining Sirdar's Certificate Annexure P-2 issued by none else than the Chairman of the Board of Mining Examination, the date of birth of the petitioner is recorded as 6-4-1949, however, in the service record (Annexure R-3), the date of birth of the petitioner is recorded as 11-3-1945.

In view of the above contradictory evidence and in view of sub-clause (ii) of clause (B) of Implementation Instruction No.76 (Annexure R-4), which envisages that "wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No.34/ **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Determination Committee/Medical Board". Clause (C) of Implementation Instruction No.76 envisages that "Age Determination Committee/Medical Board will be constituted by the Management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B) (i) (a) or (B) (i) (b), the date of birth recorded in the records of the company, namely, Form B register, and Identity Cards will be treated as final." Clause (D) mentions "For determination of the age, the Committee/Medical Board may consider the evidences, available with the Colliery Management and/or adduced before the employee concerned." Clause (F) further envisages that "Where the management (i.e.) Area Age Assessment Committee consisting of General Manager, Personnel Manager and Medical Officer-in-charge of the Area is satisfied that there is glaring disparity between the date of birth recorded in the identity cards and the apparent age of the employee, the cases may be referred to the Apex Medical Board located at Headquarters of the company for determination of age."

As mentioned above, there is an apparent contradiction in the above documents as in the service record of the petitioner the date of birth is recorded as 11-3-1949, whereas in the school leaving certificate and Mining Sirdar's Certificate the date of birth of the petitioner is shown as 6-4-1949. I am of the opinion that in such circumstances, clause (F) and clause (B) (ii) of Implementation Instruction No.76 should be pressed into service and the case of the petitioner should be examined by the Age Determination Committee by getting the petitioner examined medically, and thereafter, with the help of the medical report as well as the documents, the date of birth of the petitioner should be decided by the Age Determination Committee.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

50

मामला क्रमांक ...W.P.:34/... **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
1.	In the result, the petition is allowed to the extent that the General Manager, Surakachhar Colliery, Korba, should refer the case of the petitioner to the Age Determination Committee along with the relevant record filed by the petitioner and the service record. The Age Determination Committee after getting the petitioner medically examined for determination of age shall give its finding regarding the date of birth of the petitioner and that shall be treated as final. In view of this order, M.(W.)P.No.35/2005 and I.A.No.123/2005 stand disposed of. Parties are entitled for certified copy of this order. **Sd/-** **L.C. Bhadoo** **Judge**	
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